

## Role of the U.S Department of Justice in the Enforcement of Judgments

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One of the major systems of the rule of law, respect for the rule of law is the enforcement of judicial decisions. Timely execution of court decisions is a guarantee of the rights of persons for whose benefit they are imposed. An important role in ensuring their execution is set aside by the competent authorities of the State entrusted with the respective functions and which are responsible in this area.

I believe that in many states there is a problem of timely and complete performance of various court decisions. For example, the recovery of funds or property from one person (a citizen or a company) in favor of another person.

In this regard, given that in today's world the U.S. is a developed nation, the legal system is temporally refined over the centuries its research work I want to devote to the role of the U.S. Department of Justice in the enforcement of judgments.

The study of the legal system of the United States showed that the competence of the U.S. Department of Justice, in addition to prosecutorial functions also covers such matters as criminal intelligence, counterintelligence, management of federal prisons, and other functions, including enforcement of judgments.

First I want to focus on the U.S. legal system for enforcement of judgments and other decisions, the so called executive proceedings.

In the U.S., the executive shall be exercised by sheriffs and their deputies, part marshal office at the federal level, the bailiffs as well as private legal agencies. Sheriffs seize the debtor's property. And if the sheriff is usually not an attorney, his deputy must undergo training at the Police Academy, where enforcement proceedings are taught. A quick review of the organization: the legal system of enforcement proceedings in the U.S. allows you to emphasize two important facts. First, the executive is involved in the production of many organs of the state and organization. Secondly, it is often entrusted to private individuals, which are used at different levels: it can be a bailiff, who works under a license, or a private law firm engaged in tracing the property, etc. Thus, although the authorities are involved in the sphere of enforcement proceedings, thanks to distribution their function is slightly unloaded, which allows them to have fewer cases [1].

One of the measures to ensure the enforcement of judgments and acts of other organs is the use of prison. In the U.S., if the creditor does not know where the assets are situated, which shall be levied, it is possible to have recourse to the court. The debtor is given summons to court. If after that the debtor is not in court or during consideration of this matter in court does not disclose information about the location of the property, then the debtor can be sent to prison. Unlike for a criminal conviction this debtor is not assigned a specific period of time. As soon as the debtor will reveal the necessary information, he will be immediately released. According to the figurative expression, the debtor is in prison with the keys to his own pocket [2]. A similar measure is used in some states in the U.S. relative to the parent who evades child support payments. This takes into account the existence of confidence in the solvency of the debtor [3].

The United States has different experience in terms of non-judicial execution of court decisions. One such way is that a creditor may apply to the collection agency whose principal function is providing a certain pressure on the debtor in the form of a written request on allegations of the beginning of legal action against him. These agencies operate on the basis of a license. Other non-judicial means of influencing the debtor are giving the message of his non-payment to the agency

for credit information. The responsibility of these agencies is to collect information about individuals as potential unreliable borrowers. Everyone knows that in the U.S. if the person intends to obtain a credit card or buy some property on credit, the prospective creditor is entitled to insist on receiving a message from the agency providing the credit rating of persons. A negative rating may lead to denial of a loan or credit card. Credit agencies have a wide network of computer information, so even if a person wishes to obtain credit in another state, then his rating may be determined and there. However, the lender is more interested in getting money from the debtor, rather than to spoil his rating. Therefore, the lender may refrain from reporting to the agency specified on the debtor if he pays his debt [4].

A lender in the U.S. after obtaining a writ of execution may apply (depending on the state) for the assistance of an attorney, a collection agency or a private detective. For example, to obtain the information necessary for enforcement proceedings, it is recommended to apply to firms specializing in the use of computers. In addition, a person with hands on the court's decision, sometimes the right to cede their claims to any other person. In the U.S., a claim can be sold. However, we cannot say that this happens often, since it is unlikely that the buyer has paid a sum close to the amount recoverable in the said decision. Many countries of the world have experienced the problem with the execution of decisions on alimony for the maintenance of a minor child. An interesting way to get people to do their duty to the children was found by the American lawyers. Monthly child welfare authorities have access to information about new bank accounts opened in financial institutions. Thereby they may identify debtors. It is also one of the American coercive measures – this exemption driver's license. Such a measure would cover all activities requiring a license for a solution easier to execute than losing a licensed physician, lawyer, etc. [5].

The experience of the U.S. marshal for enforcement with respect to motor vehicles. Annually in the country about 13 thousand confiscated vehicles are waiting for resolution of the matter in an administrative or judicial order. The order of storage machines depends on their value. Machine at a price of more than 10 thousand dollars is placed for storage on internal parking. More expensive machines require more and compliance of their service: a monthly car needs to be wound up and it must pass two meters back and forth. Requirement for inspection of vehicles is due to the need to protect Marshal Service from claims of owners of these cars. Confiscated vehicles worth less than \$ 500 should be disposed of.

U.S. law provides for the U.S. Department of Justice, the department of the U.S. federal government, intended for law enforcement and to ensure fair and impartial trial. Headed by the U.S. Attorney General. The jurisdiction of the U.S. Department of Justice, in addition to prosecutorial functions include such matters as criminal intelligence, counterintelligence, managing federal prison, court decisions, etc. The U.S. Attorney General acts as the coordination of all federal law enforcement agencies in combating crime in the country.

Each of the 94 federal judicial districts (which for the purposes of the administration of justice in cases of federal jurisdiction is divided within the U.S.) has a department of the federal prosecutor [US Attorney] in its constituency. Prosecutors offices [Assistants of the US Attorney] carry out the bulk of work for the prosecution of cases under federal jurisdiction, direct the activities of federal investigators in their districts. Agencies of the federal district attorneys are subject to (through the Department of Justice) the U.S. Attorney General.

The Department of Justice of the United States has the office of the United States Marshals Service (USMS) as one of its branches. In each federal judicial district is included under the Department of Justice Office of the United States Marshal. These agencies, together, form a sort of federal judicial police, bailiffs. The main function of the U.S. Marshals and members of their departments is to fulfill all orders, ordinances and regulations, cast a federal court (which they are attached) and the enforcement of which entered into force court decisions. On federal matters it is the jurisdiction the

U.S. Marshals to arrest, search and seize under a warrant issued by the court, provide protection to courts, judges, actors, detention and transportation of those arrested, accused and convicted before placing them in correctional institutions, implement a program for protection of witnesses in cases associated with organized crime. Overall supervision of the activities of all the U.S. Marshal Services involves the Department of Justice. U.S. Marshals are Officials of the federal justice system, accountable to the U.S. Attorney General, through the Department of Justice. Each marshal shall be appointed for 4 years by the President and confirmed by the Senate. Each performs his functions within the federal judicial district. In the U.S., thus there are 94 U.S. marshals with their subordinates with staff totaling more than 4000 people (in the security courts marshals contribute more than 3 thousands of «contractors» of the security firms). The director of the Marshal's Service Officer, appointed by the President, manages the entire service. The deputy Director for Operations oversees matters relating to enforcement of Marshal Service activities, protection of witnesses, transporting prisoners, as well as seizure of assets and operations to confiscate property. The deputy Director of Administration manages human resources, procurement and property management, premises, transport and communication facilities, information systems, and in his conduct of the Academy is training Marshal's Service.

The Marshal of the United States is one of the oldest federal government positions in the field of law enforcement. It was established by the Judiciary Act of 1789. Since that time, the U.S. Marshal's functions have evolved: at one time the marshals were responsible for the content of military prisons and executed the sentences of military tribunals. Before the creation in 1865 of the U.S. Secret Service they provided protection of the President, and until the birth of the FBI they were involved in investigative work in criminal cases, and performed some other responsibilities for execution of all lawful orders emanating from federal authorities. In essence, the U.S. Marshals acted as a kind of police force for the federal government. Throughout its history the U.S. marshals served an important link between the executive and judicial branches of government since its inception in 1789, since the main function of the U.S. Marshal and his staff was the fulfillment of all orders, regulations and orders of federal court enforcement of enacted legal solutions. Today, the U.S. Marshals perform tasks that are essential for smooth and effective functioning of the federal Justice system.

Also interesting is the experience of implementation of decisions and judgments of court in the part of financial penalties. U.S. law for the enforcement of court provides for the creation of a «group» called FEDERAL CONSOLIDATED TEAM ON THE EXECUTION OF JUDGMENTS (CTEJ), which also included representatives of the Department of Justice. I want to give explanations by Donald Stern, the U.S. Attorney for the federal judicial district of Massachusetts, as well as examples where the execution of court decisions was provided by CTEJ. So, CTEJ aims to establish the whereabouts of money and property and handling penalties on them in connection with the execution of sentences of the appointment of fines, court orders for damages and judgments in civil cases rendered by federal courts. It protects the integrity of the federal justice system, the legitimate interests of taxpayers and victims of crime. CTEJ is a body to coordinate the efforts of the services of the U.S. Attorney, U.S. Marshals Service, the U.S. Probation Service, the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and Inspectors General of various federal agencies. CTEJ conducts investigations to locate the property of people who avoid following through with their punishment in criminal or civil cases of material punishment. Once the location of the property is set, the U.S. Attorney office excites the corresponding production for the Treatment of penalties on them. If it is determined that the person liable to criminal or civil case, intentionally concealed the property to frustrate the execution of court decisions, or provide a service of the U.S. Attorney or other authorities false information about their financial position, against such person may be prosecuted. CTEJ is successful in their activities on a wide range of cases. Below are a few examples of CTEJ practices.

**1. CASE OF THE UNITED STATES AGAINST RICHARD SHKODNEK [6].**

In December 1995, Richard Shkodnek was convicted of fraud in medical insurance, mail fraud, obstruction of justice and pressure on witnesses. He was sentenced to forty six months imprisonment, two-year period of being under surveillance after his release and pay one million dollars in fines and \$ 300 thousand dollars in damages. Shkodnek ignored the court decision. CTEJ conducted an investigation and found that Shkodnek had an impressive investment account company Fidelity Investments, which was possible seizure. Having obtained the ex parte (without notice to the other side) a writ in the district court, the team arrested the 1.3 million dollars on the investment account to cover the amount of the fine and the amount of damage.

**2. CASE OF THE UNITED STATES AGAINST Cyril HOCHBERG** In 1993, Cyril Hochberg, pleaded guilty to involvement in the fraud, as a result of which he received bribes in the form of not earned awards from attorneys specializing in real estate transactions, which it supplied the great deeds, as Chairman of the Credit Union «Blue Hill» in the late eighties. Hochberg was sentenced, as well as to pay 140 thousand dollars in damages. Hochberg said that he could pay only \$ 200 a month in reimbursement of its debt amounting to 140 thousand dollars. CTEJ conducted an investigation Hochberg's financial situation, since the image of his life suggests that he had the financial capacity to pay significantly more. Hochberg lived in an expensive apartment on Beacon Street in Boston and spent winter vacation in a luxury hotel on Miami Beach. Computer search and financial audit revealed that he is both the recipient and executor of his mother's bequeathed property in Broward County, Florida. During the investigation it was found that six months they had spent about 80 thousand dollars from its share in the property, but his bank account has remained securities of approximately 50 thousand dollars. In accordance with federal law on the procedure for collecting debts, CTEJ arrested the securities and sell them for 42 thousand dollars through an investment company. Also CTEJ seized 8,000 dollars, from his bank account.

**3. CASE OF THE UNITED STATES vs. Michael Murray** Michael Murray was convicted of drug smuggling in 1994 and is currently serving a prison term of thirty years imprisonment. Also, the court decision, he was obliged to pay a fine of \$ 10 million. A single payment in the payment of the penalty was made, and CTEJ started looking for property, which was discovered by Murray owned real estate located in East Boston. CTEJ foreclosed on the property and sold it at auction for 72,000 dollars.

**4. CASE United States v. Arnold Friedman** After Arnold Friedman pleaded guilty to bank fraud and making false statements in official production, the law enforcement agencies in the U.S. found that up to the possible appointment by the court a large sum payment of damages, he began to transfer its funds. CTEJ immediately obtained a court order prohibiting the transfer of funds to Friedman as long as possible fines or damages are not imposed on him by the District Court and the amount of penalty will not be paid in full. After obtaining a court order, CTEJ continued its investigation and opened a criminal plan, during implementation of which Friedman was able to sell a luxury condominium for 950 thousand dollars four days before sentencing. This condominium is owned by a trust company in 1915, that Friedman founded four years before. Again CTEJ got a court order that allowed the U.S. Marshals Service to seize all proceeds (excluding funds required to meet all claims to secure this property and other costs associated with the closing of real estate) from the sale of the condominium. U.S. Marshals Service seized 250 thousand dollars, the proceeds after the closing of real estate. After sentencing on those funds were levied in a partial restitution of \$ 1 million.

**5. CASE OF THE UNITED STATES AGAINST DEYLAYT Dare**

In 1996 CTEJ launched an investigation to determine whether an enforceable court decision in a civil case to recover 1.3 million dollars, according to which nothing was paid. CTEJ learned that real estate which the defendant used for his business, was unduly burdened by five mortgages, including mortgages. CTEJ to verified facts related to these mortgages and found that they were



either completely satisfied or incorrectly drawn. After contesting all mortgages and the Land Court of Massachusetts, CTEJ foreclosed on the property received at the auction 342,000 dollars.

6. CASE OF THE UNITED STATES AGAINST DONATO ANDZHIULO April 3, 1986 Donato Andzhiulo was sentenced to 20 years in prison and a fine of 40.000 dollars for racketeering (extortion), conspiracy to racketeering activities in the form of an illegal organization of gambling and conspiracy to obtain debt through extortion. Andzhiulo was released on October 7, 1997, in the case of paying the fine in full or establish his inability to pay a fine of U.S. Magistrate. Andzhiulo chose the latter procedure. In May 1997 Andzhiulo applied for the determination of U.S. Magistrate its inability to pay the remainder of the fine. By decision of the judges a CTEJ investigation was initiated to identify ability of Andzhiulo to pay the fine. Shortly after Andzhiulo learned about the investigation, he withdrew his application and paid the remaining U.S. \$ 38.000 fine.

United States Attorney Donald K. Stern announced his top priority was improving the process of enforcement of sentences of the courts in the imposition of fines, restitution and court decisions in civil cases. This task was assigned to the department for enforcement of judgments in terms of monetary penalties. Acting in compliance with regulations of the U.S. Attorney, Department for enforcement of judgments in terms of monetary penalties revised standards and practices of their activities in order to find an approach that would give the best results. Such a review of approaches led that department for enforcement of judgments in terms of property penalties to streamline their efforts to implement judicial decisions and to effectively coordinate their activities with other key agencies with the authority to preserve the integrity of the federal justice system. A direct result of this process was the creation of CTEJ.

Other agencies involved in enforcement of judicial decisions and concerned about its effectiveness, are the U.S. Marshals Service, the Probation Service, the U.S. Postal Inspection Service, the U.S. Federal Bureau of Investigation and the Inspector General services of various federal agencies. For example, U.S. Marshal Nancy Makdzhillivrey noted that the lack of material resources for financial investigations is a serious obstacle to effective enforcement of judicial decisions. As a result, it placed the responsibility for the production of financial investigations for a specific employee of his department. This decision has drastically increased the efficiency CTEJ. Likewise, the head of the Probation Service U.S. Francesca Bowman announced the execution of offenders a priority for all financial obligations to victims of crime. She appointed the employee to CTEJ Services to assist in the investigation for the detection of hidden assets. Federal Bureau of Investigation in Boston, and Postal Inspection Service United States also appointed their representatives to help CTEJ in its activities. Such joint activities of several agencies makes the federal judicial district of Massachusetts unique among 94 federal judicial districts in the country in terms of its efficiency in the establishment of property, hidden by those who would like to avoid payment of monetary compensation damages, fines, civil or criminal cases. The most important is the fact that CTEJ District of Massachusetts was formed on the basis of cash logistics and human resources, cooperating agencies. This is an example of how law enforcement agencies of the state can do better and achieve desired results.

Direct interest in the efficient operation of CTEJ are the federal judiciary, the taxpayers and the victims of crime.

1. Judiciary. The integrity of the federal justice system hedged vigorous enforcement of judicial decisions. Every time an outstanding criminal or civil case remains outstanding as a result of the fraudulent concealment of property or improper implementation of decisions of federal courts, it undermines the credibility of our justice system. Coordination of efforts of key federal agencies to execute court decisions in criminal or civil cases is extremely important.

2. Taxpayers. The taxpayer also directly interested in the effective enforcement of judgments. At that time, as benefits from the fair and credible judicial system is not amenable to mathematical calculation, the revenue coming into the treasury of the U.S. as a result of CTEJ is quite measurable.

The annual collection handled by the U.S. Attorney in the District of Massachusetts for the past two years (213.1 million dollars), exceeded all foreclosures made in the ten years after 1980. It is very important that for every dollar invested in the activity of service assistant U.S. attorney in accounting in 1997, eight dollars were received. CTEJ only contributes to increased profitability of such activities in the interests of taxpayers. Another financial benefit is derived from the expected growth in voluntary payments in connection with the imposed civil and criminal monetary penalties, which are imposed on offenders. Defendants convicted in civil cases or in criminal cases, realize that CTEJ acts vigorously in the establishment of property and can impose foreclosure.

3. Victims of crime. In accordance with the Law on the Control of Crime, all monies received from fines in criminal cases, imposed by federal courts are deposited into a fund for victims in criminal cases. This fund is used widely to help victims of crime (the corresponding norm of the law – Article 10601 of Title 42, United States Code). For example, fund money has assisted victims of the terrorist bombings in Oklahoma. Also, the means of these funds are used to improve the process of prosecution and prosecution of cases of child abuse. Approximately fifty percent of funds received from fines is used in national programs of compensation to victims of crime. In addition, the foreclosure on the property for purposes of enforcement of court orders for compensation in criminal cases provides material benefits to federal agencies, which have suffered as a result of crimes. SBISR also helps redress to individuals.

CTEJ consists of: a staff office of the U.S. Prosecutor with the rank of Assistant U.S. Attorney, who is the head of the department for enforcement of judgments in terms of monetary penalties, the staff of the department for enforcement of judgments in terms of monetary penalties, officer, Marshal of the United States, a probation officer of the United States, FBI operational and investigative staff, the U.S. Postal Inspection Service, and investigative officers of Inspectors General of various federal agencies.

- U.S. Attorney Service. The Assistant U.S. Attorney, who is also head of the department for enforcement of judgments in terms of monetary penalties, determines the main directions and coordinates the activities of individual cases. Once the investigation ends, the Assistant U.S. Attorney initiates the corresponding action for foreclosure on the discovered funds or property. He helps to establish the property department staff on execution of court decisions regarding monetary penalties carried out computer searches and examinations of the financial situation of offenders in debt.

- U.S. Marshal Service. U.S. Marshal Service employees carry out investigations to search for fleeing debtors and locate their assets. The U.S. Marshal Service employee uses its information network, and uses information from the Federal Bureau of Investigation, the U.S. Probation Service and members of the Department for enforcement of judgments on the monetary penalty in connection with their activities on the detection equipment. On individual cases, he seizes property, manages and disposes of them. U.S. Marshal Service employees are also engaged in organizing and performing issues of the case and execute orders, which are published by the actions of CTEJ.

- U.S. Probation Service. The Probation Service of the United States appoints CTEJ U.S. probation officers. The incumbent performs search for property and acts as a liaison to the transfer of cases consolidated brigade from the U.S. Probation Service.

- The Federal Bureau of Investigation. The FBI assigns its operational and investigative staff for the coordination of specific actions to CTEJ establishment of financial information relating to those issues that were the subject of the investigation, previously conducted by the FBI. The main task of the operational-investigative staff is to meet requests from other team members for information. The FBI reports relating to a matter material to the operational and investigative staff, which is the case.

- U.S. Postal Inspection Service. Investigative staff of the U.S. Postal Inspection Service is also included in CTEJ. Such investigative officers carry out the necessary tasks of operational work on specific cases.

– Intelligence and investigative officers of Inspectors General of federal agencies. Operational-investigative staff services inspector general investigate in order to detect fraudulently concealed assets. These employees perform duties associated with the production of operations and investigation of both criminal and civil cases [6].

In conclusion, I want to note that one should study and consider the possibility of introducing in Kazakhstan, some of the existing enforcement mechanisms in the U.S. decision. In particular, Kazakhstan has no legal basis for the creation of a «group» like CTEJ for the execution of complex solutions. I think the introduction of such an institution would help the very execution of the decisions. In my opinion, it is interesting and useful for the execution of a possibility of receiving a message from the agency providing the credit rating of persons, etc. However, I believe that Kazakhstan does not have the laws in place to allow the sale to someone else of the claims on a debt, as a very small number of individuals expresses the wish to buy it. In general, the methods of enforcement of judicial decisions and the role of U.S. Department of Justice, in my opinion, are very useful in terms of their possible introduction into the legal system of other countries.

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## Taxation of U.S. Corporations. Corporate Income Tax

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As we know, the purpose of any business is profit (income), is to eventually satisfy the personal needs and requirements. What conclusion about the purpose of business we do, primarily because of our legislation, namely the Law of the Republic of Kazakhstan (ROK) on private business, [1], paragraph 5, article 1 states that: private enterprise – an initiative the activities of private entrepreneurs aimed at generating income based on ownership of private entrepreneurs themselves and carried out on behalf of private entrepreneurs for their risk and their financial liability.

According to Mr. Smith, a tax – a burden imposed by the state in the form of a law which provides for its size, and payment procedures. The state's right to levy taxes and charge people to pay them derives from the need for a state and its institutions for the benefit of society and individuals. The state must be guided by certain principles: universality (everyone must participate in state support commensurate with the ability to pay, that is proportional to income, which he enjoys under the patronage of the state), certainty (the taxpayer must be aware of the time, place, method and amount of payment); convenience of charging the tax for the payer (a convenient way, at a convenient time when the payer has a maximum of) legal form of the tax agency as a guarantee of transparency, competitiveness, and consent to the forcible seizure of private property) and other principles.